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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,926	07/30/2003	Lothar Gluderer	WSO-41953	1921
24131	7590	01/13/2005		EXAMINER
LERNER AND GREENBERG, PA P O BOX 2480 HOLLYWOOD, FL 33022-2480			GIBSON, ROY DEAN	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/629,926	GLUDERER, LOTHAR
	Examiner Roy D. Gibson	Art Unit 3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 December 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5,9-11,13,15,16 and 19-22 is/are rejected.  
 7) Claim(s) 4,6-8,12,14,17,18,23 and 24 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/10/03&amp;10/18/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5, 9, 10, 11, 13, 15, 16 and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Kushnir (6,508,831).  
Kushnir discloses a system and sub-systems for control of a patient's body, the device comprising:

an applicator (garment or garments) having at least two layers defining a space therebetween (Figure 1) with at least two chambers (sub-systems or individual garment segments) individually and independently fillable with fluidic media for heating or cooling the patient's body;

a control device connected to the applicator for controlling the temperature of the fluid media in the space; and

temperature sensors connected to the control device with feedback to the controller to maintain the temperature of the fluid media within the chambers as preset; wherein the chambers are disposed next to one another; wherein at least one of the layers is impermeable to the fluid media in the chambers and at least one chamber or channel is

averted from the body part and at least channel is disposed at a layer of the applicator facing the body part; wherein each of the chambers is subdivided onto additionally communicating sub-chambers (Figures 2 and 3 and col. 7, line 29-col. 9, line 45 and col. 10, lines 8-64).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kushnir.

As to claim 3, Kushnir fails to disclose an EKG output is monitored as a body parameter. However, the examiner maintains that such a monitoring is typically provided as important information to an operator or medical personnel during or that at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Kushnir to include EKG monitoring.

As to claim 22, Kushnir discloses the layers of the applicator are made of plastic, but not specifically of orientated polytetrafluoroethylene and polyvinylchloride. However, the examiner maintains it would have been an obvious matter of design choice to a person of ordinary skill in the art fabricate the layers from these materials because

Applicant has not disclosed that such materials provides an advantage, are used for a particular purpose, or solves a stated problem.

***Allowable Subject Matter***

Claims 4, 6-8, 12, 14, 17-18 and 23-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Daffer et al. (6,623,511) discloses a chromatherapy shower system ; and Parker et al. disclose an apparatus for automatic application of compositions to the skin.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Roy D. Gibson  
Primary Examiner  
Art Unit 3739

January 10, 2005